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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/335,608	06/18/1999	TIMOTHY J. MOULSLEY	PHB-34-257	6666
24737	7590	07/15/2003	EXAMINER	
PHILIPS INTELLECTUAL PROPERTY & STANDARDS P.O. BOX 3001 BRIARCLIFF MANOR, NY 10510			DO, NHAT Q	
		ART UNIT	PAPER NUMBER	
		2663		
DATE MAILED: 07/15/2003				

Please find below and/or attached an Office communication concerning this application or proceeding.

<b>Office Action Summary</b>	Application No.	Applicant(s)
	09/335,608 Examiner Nhat Do	MOULSLEY, TIMOTHY J. Art Unit ND 2663

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

#### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

#### Status

- 1) Responsive to communication(s) filed on 05 May 2003.
- 2a) This action is FINAL.      2b) This action is non-final.
- 3) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

#### Disposition of Claims

- 4) Claim(s) 1,2,4-7 and 9-11 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) Claim(s) \_\_\_\_\_ is/are allowed.
- 6) Claim(s) 1,2,4-7 and 9-11 is/are rejected.
- 7) Claim(s) \_\_\_\_\_ is/are objected to.
- 8) Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

#### Application Papers

- 9) The specification is objected to by the Examiner.
- 10) The drawing(s) filed on \_\_\_\_\_ is/are: a) accepted or b) objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) The proposed drawing correction filed on \_\_\_\_\_ is: a) approved b) disapproved by the Examiner.
- If approved, corrected drawings are required in reply to this Office action.
- 12) The oath or declaration is objected to by the Examiner.

#### Priority under 35 U.S.C. §§ 119 and 120

- 13) Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) All b) Some \* c) None of:
1. Certified copies of the priority documents have been received.
  2. Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \* See the attached detailed Office action for a list of the certified copies not received.
- 14) Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).
- a) The translation of the foreign language provisional application has been received.
- 15) Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

#### Attachment(s)

- |  |   |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892)                             | 4) <input type="checkbox"/> Interview Summary (PTO-413) Paper No(s). _____  |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)         | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449) Paper No(s) _____ | 6) <input type="checkbox"/> Other: _____                                    |

## **DETAILED ACTION**

### ***Claim Rejections - 35 USC § 112***

1. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

2. Claims 4, 6, and 9 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

Claim 4 is indefinite because the claim depends on claim 3, which has been cancelled.

Claim 6 is indefinite because the claim depends on claim 3, which has been cancelled.

Claim 9 is indefinite because the claim depends on claim 8, which has been cancelled.

### ***Claim Rejections - 35 USC § 103***

3. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

4. Claims 1, 2, 4-7, and 9-11 are rejected under 35 U.S.C. 103(a) as being unpatentable over U.S. Patent No. 6,477,176 to Hamalainen et al in view of U.S. Patent No. 5,818,871 to Blakeney, II et al.

Regarding to claims 1, 6, and 7, Hamalainen et al disclose a system comprising:

A MS 32 (first station) and a BTS 33 (second station) (Fig. 8a);

A dual mode channel 31 for communication real-time and non-real time packet data (Fig. 8a; abstract, lines 1-4);

Since Hamalainen et al disclose the BTS 33 (second station) has a corresponding structure as the MS 32 (Col. 3, lines 21-23). Hamalainen et al disclose the MS 32 comprises a transceiver 11 (Fig. 1). Consequently, the BTS 33 also comprises a transceiver.

The MS 32 (first station) comprises:

The transceiver 11 (Fig. 1);

The controller 10 controls the output of real-time data and non-real-time data (Col. 3, lines 32-34; lines 57-63);

Speech coding system (Comprising elements 3, 4, and 5) prepares speech data from speech input 1 (Col. 3, lines 29-32);

The controller 10 receives timing information from the element 4 indicating interruptions of the speech data (Col. 3, lines 45, 46; lines 57-63).

Hamalainen et al fail to disclose the controller 10 controls the output of non-real-time data when data rate of real-time data is less than the full data capacity of the channel. Blakeney, II et al disclose a similar system comprising a controller (comprising a microprocessor, the service negotiator 40, and the multiplexer 48) for controlling the output of non-real-time data when data rate of real-time data is less than the full data capacity of the channel (Col. 11, lines 29-51). It would have been obvious to a person of ordinary skill in the art by the time the invention was made to modify the Hamalainen et al controller 10 so that it outputs non-real-time data when data rate of real-time data is less than the full data capacity of the channel as the controller taught by Blakeney, II et al. A skilled artisan would have been motivated to do so in order to employ the full capacity of the system.

Regarding to claim 2, Hamalainen et al disclose the real-time data is speech data (Fig. 1).

Regarding to claims 4, and 9, Hamalainen et al disclose a buffer 9 for storing non-real-time data for transmission when there is no real-time data to transmit (Col. 3, lines 61-63).

Regarding to claim 5, Hamalainen et al disclose the first station is a MS and the second station is a BTS. However, Hamalainen et al also disclose BS and the BTS have corresponding function and structure (Col. 3, lines 15-23). Therefore, the first and second stations are interchangeable.

Regarding to claims 10, and 11, Hamalainen et al disclose real-time data and non-real-time data are transmitted in one channel (Fig. 7).

***Response to Arguments***

5. Applicant's arguments with respect to (old) claims 3, and 8 have been considered but are moot in view of the new ground(s) of rejection.

***Conclusion***

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Nhat Do whose telephone number is (703) 305-5743. The examiner can normally be reached on 8:30 AM - 5:30 PM Monday - Friday.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Chau Nguyen can be reached on (703) 308-5340. The fax phone numbers for the

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organization where this application or proceeding is assigned are 703-308-6743 for regular communications and 703-308-6743 for After Final communications.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is 703-305-3900.

Nhat Do  
Examiner  
Art Unit 2663

ND

June 26, 2003



MELVIN MARCELO  
PRIMARY EXAMINER